

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY & INTESTATE JURISDICTION

...

NOTICE OF MOTION NO.1 OF 2007

IN

PETITION NO.4 OF 2007

...

Bomi Hormusji Hansotia ...Petitioner

v/s.

Mrs.Katy Keki Irani & Ors. ...Respondents

...

Mr.Cyrus Adreshir i/b Pardiwala & Co. for the
Petitioner.

Mr.Janak Dwarkadas with Mr.Zal Adhayrujina i/b Divya
Shah & Associates for the Respondents Nos. 1 to 3.

Mr.Milind Jadhav for Respondent.4.

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CORAM: D.K.DESHMUKH, J.

DATED: 25TH JANUARY, 2007

P.C.:

1. This Notice of Motion is taken out by the Petitioner, who has filed the petition for Letters of Administration with the Will in relation to the deceased by name Keki Homi Irani, who was the father of the Petitioner.

2. This Notice of Motion is taken out seeking interim order against the flat which according to the Petitioner was owned by the deceased. Admittedly, it is occupied by the widow of the deceased, who is mother of the Petitioner.

3. The learned Counsel appearing for the Petitioner submits that the Respondent No.1 should be restrained from transferring the flat. It may be pointed out here that the learned counsel for the Petitioner stated that the Respondent No.1/widow has filed the petition in this court seeking probate of the Will left behind by the deceased and the Will that the widow is propounding is subsequent to the will in relation to which the present petition has been filed

by the Petitioner.

4. It appears that in the record of the Co-operative Society the flat has been transferred in the name of the widow. It further appears that that transfer is not on the basis of any will, but it is on the basis of the share certificate. In my opinion, therefore, the remedy of the Petitioner will not lie in making any application for interim order in the testamentary court, but his remedy is to challenge the transfer effected by the Co-operative Society in appropriate court. Notice of Motion is, therefore, disposed of.

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